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11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION  
15

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TORRE, VLADISLAV VASSILEV, JANE )  
18 DASCALOS, and minor G.R., individually, and )  
on behalf of all other similarly situated, )  
19 Plaintiffs, )  
20 v. )  
21 GOOGLE LLC, )  
22 Defendant. )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

CASE NO.: 3:23-cv-03440-AMO  
**DEFENDANT GOOGLE LLC'S  
REQUEST FOR JUDICIAL NOTICE  
AND CONSIDERATION OF  
MATERIALS INCORPORATED BY  
REFERENCE IN SUPPORT OF  
MOTION TO DISMISS AMENDED  
COMPLAINT**

Judge: Hon. Araceli Martínez-Olgún

1 In considering Defendant Google LLC's ("Google") motion to dismiss, Google hereby  
2 requests that the Court take judicial notice of, and/or order incorporated by reference, the  
3 documents listed below:

- 4 1. Google Privacy Policy, July 1, 2023. This document can be found at  
5 <https://policies.google.com/privacy/archive/20230701?hl=en-US>. This document is  
6 highlighted and attached hereto as **Exhibit 1**.
- 7 2. Google Privacy Policy, December 15, 2022. This document can be found at  
8 <https://policies.google.com/privacy/archive/20221215?hl=en-US>. This document is  
9 highlighted and attached hereto as **Exhibit 2**.
- 10 3. Other versions of Google's Privacy Policy from May 25, 2018 to October 4, 2022.  
11 These documents can be found at  
12 <https://policies.google.com/privacy/archive?hl=en-US>. For example, the May 25,  
13 2018 Privacy Policy can be accessed through a link at that page, and can be found  
14 directly at <https://policies.google.com/privacy/archive/20180525?hl=en-US>.
- 15 4. Google Terms of Service. This document can be found at  
16 <https://policies.google.com/terms?hl=en-US>. This document is highlighted and  
17 attached hereto as **Exhibit 3**.
- 18 5. Older versions of Google's Terms of Service. These documents can be found at  
19 <https://policies.google.com/terms/archive?hl=en-US>.
- 20 6. Meta Privacy Policy. This document can be found at  
21 <https://mbasic.facebook.com/privacy/policy/printable/>. This document is  
22 highlighted and attached hereto as **Exhibit 4**.
- 23 7. LinkedIn User Agreement. This document can be found at  
24 <https://www.linkedin.com/legal/user-agreement>. This document is highlighted and  
25 attached hereto as **Exhibit 5**.
- 26 8. Yahoo Terms of Service. This document can be found at  
27 <https://legal.yahoo.com/us/en/yahoo/terms/otos/index.html>. This document is  
28 highlighted and attached hereto as **Exhibit 6**.

9. The Dropbox Privacy Policy: frequently asked questions. This document can be found at <https://help.dropbox.com/security/privacy-policy-faq>. This document is highlighted and attached hereto as **Exhibit 7**.
10. Reddit Privacy Policy. This document can be found at <https://www.reddit.com/policies/privacy-policy>. This document is highlighted and attached hereto as **Exhibit 8**.
11. GitHub Privacy Statement. This document can be found at <https://docs.github.com/en/site-policy/privacy-policies/github-privacy-statement>. This document is highlighted and attached hereto as **Exhibit 9**.
12. Spotify Privacy Policy. This document can be found at <https://www.spotify.com/us/legal/privacy-policy/>. This document is highlighted and attached hereto as **Exhibit 10**.
13. California Senate Committee on the Judiciary, Analysis of AB 375 (June 25, 2018). This document can be found at [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201720180AB375#](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB375#). This document is attached hereto as **Exhibit 11**.

As set forth below, all these documents are subject to judicial notice under Fed. R. Evid. 201, should properly be considered incorporated by reference in Plaintiffs' Amended Complaint, and are properly considered on Google's motion to dismiss.

### **DISCUSSION**

"In general, websites and their contents may be judicially noticed." *See Threshold Enters. Ltd. v. Pressed Juicery, Inc.*, 445 F. Supp. 3d 139, 146 (N.D. Cal. 2020) (collecting cases). Courts within this District routinely take judicial notice of terms of services and policies, *Taiming Zhang v. Twitter Inc.*, 2023 WL 5493823, at \*3 (N.D. Cal. Aug. 23, 2023) (collecting cases), including Google's Terms of Service and Privacy Policy, *see, e.g., In re Google Assistant Privacy Litig.*, 457 F. Supp. 3d 797, 813 (N.D. Cal. 2020); *Matera v. Google Inc.*, 2016 WL 5339806, at \*7 (N.D. Cal. Sept. 23, 2016); *McCoy v. Alphabet, Inc.*, 2021 WL 405816, at \*2 (N.D. Cal. Feb. 2, 2021). Here, Google respectfully requests that this Court take judicial notice of just such documents:

1 Google's Privacy Policy and Terms of Service, and similar documents from Meta, LinkedIn,  
 2 Yahoo, Dropbox, Reddit, GitHub, and Spotify. These documents are attached hereto as Exhibits  
 3 1 to 10.

4 A court may also take judicial notice of legislative committee reports. *See Anderson v.*  
 5 *Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012). Accordingly, Google requests that the Court  
 6 judicially notice Exhibit 11 hereto

7 Separately, under the incorporation-by-reference doctrine, "a court may consider a writing  
 8 referenced in a complaint but not explicitly incorporated therein if the complaint relies on the  
 9 document and its authenticity is unquestioned." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir.  
 10 2007). The doctrine extends to situations where a plaintiff's claim "depends on the contents of a  
 11 document," even when "the plaintiff does not explicitly allege the contents of that document in the  
 12 complaint." *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005).

13 Here, the Amended Complaint expressly relies on Google's Terms of Service. *See* ECF  
 14 No. 28 ("FAC") ¶ 415 & n.296 (citing <https://policies.google.com/terms>); *id.* ¶ 444. The Plaintiffs  
 15 who used Google services allege that they accepted Google's Terms of Service, forming a contract.  
 16 *See id.* ¶¶ 607-608 ("By accessing and accepting the terms of agreement of each website they used,  
 17 Plaintiffs established contractual relationships with each and every website. ... [¶] These websites  
 18 include, but are not limited to, all the websites listed in this complaint and referenced in the  
 19 accompanying Exhibit B."); *id.*, Ex. B (ECF No. 28-3) at 2 (listing "com.google"); *id.* ¶¶ 17, 23,  
 20 29, 33, 39, 44, 51, 56, 61, 67, 73, 83, 85, 93-95 (all but one Plaintiff use Google services).

21 Plaintiffs plead that Google's Terms of Service "expressly incorporate[]" Google's Privacy  
 22 Policy. FAC ¶ 444. The Amended Complaint extensively references, quotes from, and relies upon  
 23 Google's Privacy Policy. *See, e.g.,* FAC ¶¶ 148 n.74, 435 & n.297 (citing  
 24 <https://policies.google.com/privacy>); *id.* ¶¶ 5, 201, 246-47. In particular, the Amended Complaint  
 25 presents a redline comparison between the July 1, 2023 and December 15, 2022 versions of  
 26 Google's Privacy Policy and alleges that Google introduced a significant change in July 2023.  
 27 FAC ¶ 201; *id.* ¶¶ 5, 208, 246. Thus, both the current and historical versions of Google's Privacy  
 28 Policy should be incorporated by reference. Plaintiffs also cite, reference, and rely upon the terms

1 of service and/or privacy policies of Meta, LinkedIn, Yahoo, Dropbox, Reddit, GitHub, and  
2 Spotify, *id.* ¶¶ 158-164, 301-304, 309-311 & nn.209-215. Accordingly, Exhibits 1 to 10 should  
3 be deemed incorporated into Plaintiffs' Amended Complaint by reference.

4 For these reasons, Google respectfully requests that the Court consider the above-  
5 referenced documents in connection with Google's Motion to Dismiss Plaintiffs' Amended  
6 Complaint.

7 Respectfully submitted,

8 Dated: February 9, 2024

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